

**MINUTES**  
**OF**  
**THE UTAH RADIATION CONTROL BOARD**  
**NOVEMBER 7, 2003**  
**Department of Environmental Quality (Bldg. #2)**  
**Conf. Room 101**  
**168 North 1950 West**  
**Salt Lake City, Utah 84114-4250**

**BOARD MEMBERS PRESENT**

Karen S. Langley, M.S., Chair  
Stephen T. Nelson, Ph.D., Vice Chair  
Dianne R. Nielson, Ph.D., Dir. of DEQ  
William J. Sinclair, M.S.E.H., Executive Secretary  
Keith C. Barnes, J.D.  
Kent J. Bradford, P.G.  
Thomas K. Chism, M.S.  
Gary L. Edwards, M.S.  
Rod O. Julander, Ph.D.  
Linda M. Kruse, M.S.  
Gregory G. Oman, D.D.S., B.S.  
Robert S. Pattison, B.Sc.  
John W. Thomson, M.D.  
Gene D. White, Commissioner

**BOARD MEMBERS ABSENT/EXCUSED**

-None-

**DRC STAFF/OTHER DEQ MEMBERS  
PRESENT**

Dane Finerfrock, DRC Staff  
Susan K. Giddings, DRC Staff  
Craig Jones, DRC Staff  
Loren Morton, DRC Staff  
Raymond Nelson, DRC Staff  
Yoli Shropshire, DRC Staff  
Denise Chancellor, Attorney, DEQ/Atty Gen's Ofc

**PUBLIC**

Kenneth L. Alkema, Envirocare of Utah, Inc.  
Ronno W. Dan, Staff of Senator Orrin Hatch  
Alan Grundvig, ATK Thiokol Propulsion  
Michelle McOmber

Tye Rogers, Envirocare of Utah, Inc.

### **MEETING CALLED TO ORDER**

The Utah Radiation Control Board convened in the DEQ Building #2, Room 101, 168 North 1950 West, in Salt Lake City, Utah. The meeting was called to order at 2:05 p.m. by Karen S. Langley, Chair to the Board. All members and public attending the meeting were asked to indicate on the public sheet they signed-in if they wished to address any items on the agenda. Those desiring to comment would be given a chance to address their concerns before the end of the Board Meeting.

### **Introduction of New Staff Member to the Division of Radiation Control (DRC):**

Craig Jones, Section Manager for X-Ray and Radioactive Material Licensing introduced a new member to the DRC Staff, David R. Hogge. Craig said that Mr. Hogged would be working with the Radioactive Material Licensing Staff in DRC. David R. Hogged previously worked at Utah County Health Department as an Environmental Scientist, and as a Radiation Safety Technician and Radiation Chemist in Las Vegas, Nevada. He received his Bachelor's Degree in Physics from UNLV and two years of Graduate school in Health Physics from UNLV, and served as Radiation Safety Technician for the campus at UNLV for two and half years before moving to the Salt Lake area in the year 2000.

## **I. APPROVAL OF MINUTES (Board action item)**

### **a. Approval of October 3, 2003 Minutes**

Thomas K. Chism, proposed the following changes to the Minutes:

1. Page 3, the title of Item III., which reads "RADIOACTIVE MATERIALS LINCESING/INSPECTION" **Change to read** "LICENSING . . ."

Karen S. Langley, Chair, proposed the following changes to the Minutes:

2. Page 9., Item VI. a. (4), last paragraph which reads "Another inspection, in conjunction with the **Sate**, is planned for the fall of 2004." "**Change to read** "**State . . .**"

**MOTION MADE BY KENT J. BRADFORD TO APPROVE THE MINUTES OF OCTOBER 3, 2003 AS AMENDED, SECONDED BY THOMAS K. CHISM.**

**MOTION CARRIED AND APPROVED UNANIMOUSLY**

## **II. RULES (Board action item)**

### **a. Five-year review of R313-21, R313-30, and R313-38**

Craig Jones introduced this rule. He said that the Utah Administrative

Rulemaking Act (Title 63, Chapter 46a of the *Utah Code*) requires an agency to review each of its administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to remind agencies to amend or repeal rules that are archaic in form, are no longer used, for which statutory authority no longer exists, or are otherwise unnecessary.

The Radiation Control Act specifies that the Radiation Control Board may make rules. Because the Rulemaking Act's definition of "agency" includes each state board authorized or required by law to make rules, it is appropriate that the Radiation Control Board approve the five-year review of a rule.

To retain a rule as part of the *Utah Administrative Code*, a "Five-Year Notice of Review and Statement of Continuation" must be filed with the Division of Administrative Rules, before the rule's anniversary date. A filing form exists and the following information must be provided:

- A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule;
- A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
- A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

Susan K. Giddings made a presentation to the Board as follows:

This action item pertains to a Five Year of Review and Statement of Continuation for the following Utah Radiation Control Rules: R313-21, "General Licenses," R313-30 "Therapeutic Radiation Machines," and R313-38 "Licenses and Radiation Safety Requirements for Well Logging." The five year review due date for these rules is January 25, 2004.

R313-21, "General Licenses" establishes a general license for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material. The rule is needed to meet the requirements of federal law relating to radiation control.

R313-30, "Therapeutic Radiation Machines" establishes requirements for the use of therapeutic machines. The rule should be continued based on the recommendations of the Conference of Radiation Control Program Directors to insure consistency of radiation protection of the public and radiation workers.

R313-38, "Licenses and Radiation Safety Requirements for Well Logging " prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive

markers, and uranium sinker bars in well logging in a single well. The rule also prescribes radiation safety requirements for persons using licensed material in these operations. The rule is needed to meet the requirement of federal law relating to radiation control.

**RECOMMENDATION:**

The Executive Secretary recommended that the Board approve the continuation of R313-21, R313-30, and R313-38 of the Utah Radiation Control Rules and direct DRC staff to file the continuation for rulemaking prior to the deadline of January 25, 2004.

**Questions by the Board:**

Some of the Board Members asked whether these rules went out for public comment.

Susan Giddings responded that these rules do not go out for public comment. She said that this continuation and review would be published in a document called the "*State Bulletin*," that is issued twice a month.

**MOTION MADE BY SEPHEN T. NELSON TO DIRECT DRC STAFF TO FILE AND APPROVE THE CONTINUATION FOR RULEMAKING PRIOR TO THE DEADLINE OF JANUARY 25, 2004, SECONDED BY GREGORY G. OMAN.**

**MOTION CARRIED AND APPROVED UNANIMOUSLY**

**III. RADIOACTIVE MATERIALS LICENSING /INSPECTION (Board information item)**

**a. Summary of meeting of the Organization of Agreement States, October 13-17, 2003, Chicago, Illinois – Craig Jones**

Craig attended the annual meeting of the Organization of Agreement States in October 15 –17, 2003. This organization is a voluntary, scientific and professional society composed of representatives of Agreement States. The purpose of the Organization is to provide a mechanism for Agreement States to work with each other and with the Nuclear Regulatory Commission on regulatory issues associated with their respective agreements.

**Information Highlights:**

- Efforts to control sealed sources of radiation are being coordinated with states, the NRC and the Department of Homeland Security. The purpose is to protect citizens from individual's intent on using radioactive materials for malicious, destructive purposes. Associated with this issue were presentations on a Government Accounting Office Report on materials security; TOPOFF-2 exercise

(RDD scenario in Seattle); weapons of mass destruction groups within the Federal Bureau of Investigation, customs and border protection; and emergency assistance through FEMA and DOE.

- Progress is being made to develop the elements needed for a National Materials Program. Work products include a framework and process that NRC and Agreement States could use to prioritize regulatory needs, a national industrial radiographer certification program, and a methodology for improving the process of inspecting licensed facilities.
- Medical use of radioactive materials was discussed in two separate areas. The first issue dealt with U.S. Nuclear Regulatory Commission's revision of the regulations that control medical use of radioactive materials. Their regulations were effective October 24, 2002 and the Division of Radiation Control must adopt compatible requirements by October 24, 2005. The second issue involved a presentation on "Selective Internal Radiation Therapy," for treatment of liver cancer. The concept is to selectively target a very high radiation dose to all tumors within the liver (regardless of their cell of origin, number, size or location) while at the same time maintaining low radiation dose to normal liver tissue. How is this done? Yttrium-90 micro spheres (tiny BBs with diameters between 20 and 40 microns). These are "manual brachytherapy sources used for permanent brachytherapy implementation therapy."

#### **IV. X-RAY REGISTRATION/INSPECTION (Board information item)**

##### **a. DEQ FY 2005 fees schedule hearing - Craig Jones**

Included in the Board packet, was a copy of a public notice that appeared in the Deseret Morning News and the Salt Lake Tribune. The notice deals with the 2005 fiscal year draft fee schedule for the Department of Environmental Quality.

The notice provides details about when and how to submit written comments, and information about a public hearing. About the time the notice appeared in the newspapers, letters were sent to seven professional associations that represent various users of x-ray systems. This letter was posted on the DRC's website on October 24<sup>th</sup>. Within two working days of the notice, registrants began to receive a postcard that described the availability of the draft fee schedule.

Contact persons within the Department have received 22 telephone calls about the proposed fee increase for the x-ray program. Craig said he has answered nine of these phone calls and he has received two e-mail messages and one letter. Most callers have asked for information about their specific circumstances or they have asked for a copy of the fee schedule. Opinions expressed to me range from, "I understand the increase and I'm okay with it" to "I vehemently oppose this fee increase."

Dianne R. Nielson added that, currently, the program is supported with general funds. Money that is collected from the fee increase will be used to cover the

remaining portion of existing funds. Right now it's about a 50/50 split in terms of general funds, about 50 percent cover the fees, a 48 percent fee structure is being added. She said she is aware of one other comment regarding the time scheduled for the hearing. The hearing will begin at 1:00 p.m. She said that this is the first time we have had that complaint, although past hearings on the fee schedule have been held during regular working hours.

**Public Comment:**

Michelle McOmber, Utah Hospital Association – I was asked to come and let you know that most hospitals are opposed to more than double increase in the rates just because it increases, obviously, the cost to run the hospitals. As costs continue to increase, we are receiving less and less reimbursement, and so any increase in cost, we are opposed to at this point in time. They just wanted me to pass that information on to you.

**V. RADIOACTIVE WASTE DISPOSAL (Board information items)**

**a. Summary of public meeting and discussion at the Hazardous Waste Regulation and Tax Policy Legislative Task Force Meeting October 14, 2003 – Bill Sinclair**

A meeting of the Hazardous Waste Regulation and Task Force was held on October 14, 2003. Most of the morning session was devoted to receiving public comment from invited speakers and the general public. There was a predominant theme regarding whether or not the Legislature and Governor should approve receipt of Class B and C low-level radioactive waste. Following the public comment period, there was discussion on where the Task Force should go in terms of fulfilling its mission as described in the legislation passed during the 2003 Legislative Session.

Task Force members also received information regarding a proposal for a new commercial solid waste landfill, the Solitude landfill to be located near Green River, Utah. Finally, the Task Force discussed taxes and fees imposed on commercial waste facilities. There was discussion regarding the temporary suspension or eventual elimination of the gross receipts tax on commercial non-hazardous solid waste facilities, such as East Carbon Development Corporation (ECDC) and the hazardous waste facilities of Clean Harbors. There was also discussion regarding the temporary suspension or eventual elimination of the fee increase for treated hazardous waste from \$14 to \$28. The elimination of the fee increase would have a direct fiscal impact on the Department regarding monies being deposited in the Environmental Quality Restricted Account. The Task Force will examine the taxes/fees question again at the November 18<sup>th</sup> meeting.

Time expired before the Department could respond to the issue of regulatory oversight for the commercial facilities. The discussion of regulatory oversight will occur at the next Task Force meeting at 8:00 a.m. on November 18, 2003 at the State Capitol.

**b. National Academy of Sciences interim report on low-activity wastes**

– **Bill Sinclair**

For the past few months, the National Academy of Sciences has been studying low-activity waste. A report was recently published regarding some initial findings. A summary of the findings from the Low Level Waste Forum was provided in the packet. The following findings were discussed:

Finding 1: Current statutes and regulations for low-activity radioactive wastes provide adequate authority for protection of workers and the public. However, some regulatory gaps were noted such as (1) some states have chosen not to exercise authority over NORM and TENORM (2) NRC has determined not to regulate pre-1978 uranium and thorium mill tailings waste, and (3) EPA has not exercised its authority to regulate non-AEA radioactive waste.

Finding 2: The current system of managing and regulating low-activity waste is complex. It was developed under a patchwork system that has evolved based on the origins of the waste.

The committee received a clear message from agencies regulating such waste: a more consistent, simpler, performance-based and risk-informed approach to regulation is needed. An interesting note was that many committee members themselves had difficulty following and applying the regulations.

Findings 3 and 4: Certain categories of low-activity waste have not received consistent regulatory oversight and management. Current regulations for low-activity wastes are not based on a systematic consideration of risks.

The committee found that the regulations focused on wastes' origins have led to inconsistencies relative to their likely radiological risks. For instance, NORM and TENORM are not regulated by federal agencies, and state regulations for these wastes are inconsistent, despite that they may contain significant concentrations of radioactive materials as compared to some highly regulated waste streams. The committee also found that current regulations generally overlook trade-offs between radiological and non-radiological risks.

**VI. URANIUM MILL TAILINGS UPDATE (Board information items)**

- a. **Amended Agreement Update - NRC Staff Assessment of Utah's Proposed Alternate Standard to Use Utah Existing Groundwater Regulation in Lieu of NRC regulations: Addition of Supplementary Information, Notice of Availability of Documents, and Extension of Comment Period - Bill Sinclair**

On October 24, 2003, a notice was published in the Federal Register regarding an extension to the current comment period regarding NRC Staff Assessment of Utah's Proposed Alternate Standard to Use Utah Existing Groundwater Regulation in Lieu of NRC regulations. The NRC determined it was necessary to extend the public comment period to allow better definition of the notice and public comment process because of a recent challenge to the process. The NRC also made certain documents available electronically that had not been available in that format during the original public comment period. The comment period now expires on November 24, 2003.

- b. **Announcement of Joint Moab Millsite Stakeholders and Cooperating Agencies Meeting, November 20, 2003, Moab – Loren Morton (See Agenda)**

Bill Sinclair asked Loren Morton to invite Dr. Kip Solomon, University of Utah, Department of Geology – Geophysics, to report to the Board as to his findings on the geology and groundwater hydrogeology at the Matheson Marsh during a future upcoming Utah Radiation Control Board meeting. Loren said he would invite Dr. Solomon to make a presentation to the Board and would notify the Board when Dr. Solomon would be ready to make his presentation so he could be place on the Agenda.

## **VII. OTHER DEPARTMENT ISSUES**

- a. **Appointment of Executive Secretary to the Board and Acting Executive Secretary during Executive Secretary's absences – (Board action item) - Dianne R. Nielson**

At the time that Bill Sinclair was appointed as Deputy Director of the Department of Environmental Quality it was the Board's decision that he would be retained in the position as Executive Secretary to the Board until a new Executive Secretary was approved. Now that Dane L. Finerfrock has been appointed Division Director of DRC, Dianne R. Nielson requested that the Board now designate Dane L. Finerfrock as the Executive Secretary for the Board. She also asked that Craig W. Jones be designated as Acting Executive Secretary during Dane's absence.

**MOTION WAS MADE BY ROD O. JUNLANDER TO CONCUR WITH DIANNE R. NIELSON'S CURRENT APPOINTMENT OF DANE L. FINERFROCK AS EXECUTIVE SECRETARY TO THE BOARD AND CRAIG W. JONES AS ACTING EXECUTIVE SECRETARY DURING THE EXECUTIVE SECRETARY'S ABSENCE, SECONDED BY GENE D. WHITE.**

**MOTION CARRIED AND APPROVED UNANIMOUSLY**

- b. **Fernald Waste Update – (Board information item)**



**- Dane L. Finerfrock (See attached presentation)**

**VII. PUBLIC COMMENT**

**IX. OTHER ISSUES**

- a. Next Board Meeting – December 5, 2003, Department of Environmental Quality (Bldg #2), 168 North 1950 West, Conference Room 101, Salt Lake City, Utah, 2:00 – 4:00**

The Board meeting adjourned at 3:20 p.m.